

## **REMARKS**

### **I. Introduction**

With the cancellation herein without prejudice of claims 1 to 99, claims 100 to 106 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

### **II. Objections to Claims**

As regards the objection to claim 102, the Examiner will note that claim 102 has been amended herein without prejudice to change “an anvil sleeve” to --a cable extension element-- thereby mooting the present objection. Withdrawal of this objection is therefore respectfully requested.

### **III. Rejection of Claims 100 to 103 Under 35 USC §102(b)**

Claims 100 to 103 were rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,609,285 (“Grant et al.”). Applicants respectfully submit that Grant et al. do not anticipate the present claims for the following reasons.

Claim 100 relates to a surgical device for at least one of cutting and stapling a section of tissue. Claim 100 recites that the surgical device includes a housing defining a bore and having a distal end. Support for this amendment may be found, for example, at page 35, lines 13 to 14 of the Specification. Claim 100 recites that the surgical device includes a trocar shaft disposed through the bore of the housing so as to be moveable relative to the housing. Claim 100 has been amended without prejudice herein to recite that at least a portion of the trocar shaft that extends distally relative to the distal end of the housing is flexible. Support for this amendment may be found, for example, in Figures 1 and 8. Claim 100 also recites that the surgical device includes an anvil attachable to the trocar shaft and configured to be moveable relative to the housing by movement of the trocar shaft.

Referring, for example, to Figure 7 of Grant et al., which is stated to show a stapling head assembly that is in its fully-open position, it is plainly apparent that Grant et al. do not disclose, or even suggest, that a portion of a trocar shaft that extends distally relative to a distal end of a housing is flexible. Rather, the trocar 200 is plainly rigid, and the cable 84 does not extend distally relative to a distal end of casing 104. Thus, in view of the foregoing, it is respectfully submitted that Grant et al. do not disclose, or even suggest, all of the features

recited in amended claim 100. As such, it is respectfully submitted that Grant et al. do not anticipate amended claim 100.

As for claims 101 to 103, which ultimately depend from claim 100 and therefore include all of the features recited in claim 100, it is respectfully submitted that Grant et al. do not anticipate any of these dependent claims for at least the same reasons set forth above in support of the patentability of claim 100.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

#### **IV. Rejection of Claims 104 to 106 Under 35 U.S.C. § 103(a)**

Claims 104 to 106 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Grant et al. and U.S. Patent No. 6,491,201 ("Whitman"). Applicants respectfully submit that the present rejection should be withdrawn for at least the following reasons.

Claims 104 to 106 ultimately depend from claim 100 and therefore include all of the features included in claim 100. As more fully set forth above, Grant et al. do not disclose, or even suggest, all of the features recited in claim 100, from which claims 104 to 106 ultimately depend. Whitman does not disclose the features of claim 100 not disclosed or suggested by Grant et al. Accordingly, it is respectfully submitted that the combination of Grant et al. and Whitman does not render unpatentable dependent claims 104 to 106, which ultimately depend from claim 100.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

#### **V. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

**VI. Fees**

No fees are believed to be required in connection with this paper. However, if any fees are required, the Commissioner is hereby authorized to charge any necessary fees or credit any overpayments to the deposit account of Kenyon & Kenyon LLP, Deposit Account No. 11-0600.

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Respectfully submitted,

By: \_\_\_\_\_

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